

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EDMUND KEITH BRADSHAW,)	Civil No.: 6:14-cv-00717-JE
)	
Plaintiff,)	FINDINGS AND
)	RECOMMENDATION and ORDER
v.)	
)	
OREGON STATE POLICE DEPARTMENT;)	
IDENTIFICATION SERVICES SECTION;)	
CHRIS P. BROWN, Superintendent; M.)	
KELLY; COUNSELOR EDSALL; JOHN)	
DOES 1-10; et al.,)	
)	
Defendants.)	
_____)	

Edmund Keith Bradshaw
#13922120
Oregon State Penitentiary
2605 State Street
Salem, OR 97310-0505

Plaintiff *Pro Se*

Andrew D. Hallman
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301

Attorney for Defendants OSP, Identification Services Section,
Superintendent Brown, and M. Kelly

JELDERKS, Magistrate Judge:

Plaintiff Bradshaw is an inmate at the Oregon State Penitentiary and is unrepresented by counsel. He brings this action against Defendants pursuant to 42 U.S.C. §1983, alleging violations of his Eighth and Fourteenth Amendment rights under the U.S. Constitution.

Procedural Background

On April 30, 2014, Plaintiff filed a Complaint seeking an order removing him from the sex offender registry and claiming that the Department of Corrections erred in calculating his original admission date by one day. Defendants moved to dismiss, asserting claim preclusion and failure to state a claim. Plaintiff sought leave to amend his Complaint and, after receiving extensions of time in which to do so, filed an Amended Complaint on December 16, 2014.

Plaintiff's Amended Complaint raised claims similar to those in his first Complaint.

Defendants again moved to dismiss on the grounds of claim preclusion and failure to state a claim. The Court granted Plaintiff an extension of time until May 7, 2015 to respond to the motion. On May 5, 2015 Plaintiff filed a "Motion for Stay and Abeyance" requesting that the Court stay this action. Dkt. #43 at 1. Defendants objected to the motion to stay and Plaintiff filed a reply reiterating the assertions set out in his Amended Complaint.

In a Findings and Recommendation and Order dated August 4, 2015, I denied Plaintiff's motion for stay and recommended granting Defendants' motion to dismiss with the further recommendation that Claim One be dismissed with prejudice and Claim Two be dismissed without prejudice. Dkt. #46. That recommendation was adopted by the Honorable Michael Simon in an Opinion and Order dated September 18, 2015. Dkt. #51. Judge Simon granted Plaintiff "leave to amend his second claim on or before October 23, 2015, if he can allege facts sufficient to overcome the two-year statute of limitations." Dkt. #51 at 4. Plaintiff's second claim

alleges that Defendants M. Kelly and Counselor Edsall violated Plaintiff's Eighth and Fourteenth Amendment rights because he was detained an extra day on one of the three consecutive sentences that compose a 250 month term he is currently serving in Oregon Department of Corrections custody for multiple robbery charges.

On October 26, 2015, Plaintiff filed a "Motion for Stay and Abeyance" requesting that the court stay his action until June 23, 2021 so that he could then "challenge his unlawful sentence after his release date." Plaintiff has not filed an amended Complaint subsequent to the Court's September 15, 2015 Order.

Defendants object to Plaintiff's motion to stay, arguing that the case should not be stayed for six years "on the potential that plaintiff might be incarcerated a day too long." Counsel for Defendants also represent to the Court that the Oregon Department of Corrections will review Plaintiff's sentence and recalculate his release date approximately six months prior to his scheduled release. Defendants argue that if, at that time, Plaintiff continues to dispute the sentence calculation he may seek the appropriate administrative and judicial remedies.

As explained in Judge Simon's Opinion and Order, Plaintiff's claim as currently pled either falls outside the statute limitations or is not yet ripe. See Dkt. #51 at 4. Plaintiff has failed to amend his complaint in accordance with the Court's Order and has not provided any reasonable or relevant basis for this court to grant a six-year stay. In light of these circumstances, Plaintiff's motion to stay is denied and this action should be dismissed without leave to amend.

Conclusion

For the reasons set out above, Plaintiff's motion to stay is DENIED and this action should be DISMISSED. A judgment should be entered DISMISSING this action without leave to amend.

Scheduling Order

This Findings and Recommendation will be referred to a district judge. Objections, if any, are due February 16, 2016. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 27th day of January, 2016.

/s/ John Jelderks
John Jelderks
U.S. Magistrate Judge